

# EXHIBIT 9

Page 1

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CORNELL HOLDEN and MIGUEL )

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MEJIA on behalf of )

7

themselves and all others )

8

similarly situated, )

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)

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Plaintiffs, )

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)

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vs. ) No.

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) 1:17 Civ. 02192

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THE PORT AUTHORITY OF NEW )

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YORK AND NEW JERSEY, et )

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al., )

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Defendants. )

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October 1, 2018

10:30 a.m.

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Deposition of JOHN F. FITZPATRICK, held  
at the offices of Winston & Strawn LLP, 200  
Park Avenue, New York, New York, before  
Laurie A. Collins, a Registered Professional  
Reporter and Notary Public of the State of New  
York.

1 2 APPEARANCES: 3 4 WINSTON & STRAWN LLP 5 Attorneys for Plaintiffs 6 200 Park Avenue 7 New York, New York 10166-4193 8 BY: ROSS M. KRAMER, ESQ. 9 rkramer@winston.com 10 EMILY C. ELLIS, ESQ. 11 ellis@winston.com 12 - and - 13 THE LEGAL AID SOCIETY 14 199 Water Street 15 New York, New York 10038 16 BY: CYNTHIA CONTI-COOK, ESQ. 17 18 19 20 21 22 23 24 25	Page 2 1 2 STIPULATIONS 3 IT IS HEREBY STIPULATED AND AGREED, by and 4 among counsel for the respective parties hereto, 5 that the filing, sealing, and certification of the 6 within deposition shall be and the same are hereby 7 waived; 8 IT IS FURTHER STIPULATED AND AGREED that all 9 objections, except as to form of the question, 10 shall be reserved to the time of the trial; 11 IT IS FURTHER STIPULATED AND AGREED that the 12 within deposition may be signed before any Notary 13 Public with the same force and effect as if signed 14 and sworn to before the Court. 15 16 * * * 17 18 19 20 21 22 23 24 25
1 2 APPEARANCES (continued): 3 4 THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY 5 Attorneys for Defendants 6 150 Greenwich Street, 24th Floor 7 New York, New York 10006 8 BY: THOMAS R. BROPHY, ESQ. 9 10 ALSO PRESENT: 11 BENJAMIN RUTKIN-BECKER (Legal Aid Society) 12 DEVERELL WRITE, Videographer 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 3 1 2 THE VIDEOGRAPHER: We are going on the 3 record at 10:30 a.m. on October 1st, 2018. 4 Please note the microphones are 5 sensitive and may pick up whispering and 6 private conversation. 7 Please place all cell phones away from 8 the microphones, as they can interfere with 9 the deposition audio. 10 Audio and video recording will continue 11 to take place unless all parties agree to go 12 off the record. 13 This is Media Unit 1 of the 14 video-recorded deposition of John F. 15 Fitzpatrick taken by counsel for the plaintiff 16 in the matter of Cornell Holden, et al., 17 versus The Port Authority of New York and New 18 Jersey, et al. This case is filed in the 19 United States District Court for the Southern 20 District of New York. We're here at the 21 offices of Winston & Strawn, located at 200 22 Park Avenue, New York, New York. 23 My name is Deverell Write, representing 24 Veritext Legal Solutions. The court reporter 25 is Laurie Collins from Veritext Legal

2 (Pages 2 - 5)

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<p style="text-align: right;">Page 62</p> <p>1                   Fitzpatrick</p> <p>2   Q. Well, as the captain you told us that</p> <p>3 one of the things that you addressed were crime</p> <p>4 stats and reduction.</p> <p>5   A. Right.</p> <p>6   Q. Did you target a reduction in the crime</p> <p>7 stats for public lewdness?</p> <p>8   A. I targeted crime reduction for any</p> <p>9 crime stat.</p> <p>10   Q. Okay. So let's focus on the crime</p> <p>11 stats for public lewdness. What directions did</p> <p>12 you give to combat that in particular?</p> <p>13   A. Okay. We had plainclothes police</p> <p>14 officers on patrol in the bus terminal, as you</p> <p>15 know, I'm sure. We had conditions teams that I</p> <p>16 had started that initiative as well to combat just</p> <p>17 what we spoke of before: quality-of-life offenses</p> <p>18 inside and surrounding the bus terminal.</p> <p>19   Q. What are -- I didn't mean to interrupt</p> <p>20 you. Go ahead.</p> <p>21   A. That's pretty much it, actually.</p> <p>22   Q. What are conditions teams?</p> <p>23   A. A supervisor -- between three and five</p> <p>24 police officers that wouldn't be post driven.</p> <p>25 They would have the freedom to roam around and</p>	<p style="text-align: right;">Page 64</p> <p>1                   Fitzpatrick</p> <p>2 neither one of those entities were put into effect</p> <p>3 to combat public lewdness alone. They were to</p> <p>4 reduce crime within The Port Authority Bus</p> <p>5 Terminal in general.</p> <p>6       If they went to the bathroom and they</p> <p>7 saw people smoking marijuana, snorting cocaine,</p> <p>8 using a hypodermic needle, sharing a hypodermic</p> <p>9 needle, engaging in public lewd, washing</p> <p>10 themselves in the sink -- I could go on all day,</p> <p>11 but they were supposed to take some action.</p> <p>12   Q. So those were uniformed officers. You</p> <p>13 said that there were also plainclothes police</p> <p>14 officers that were part of the way you were</p> <p>15 combating public lewdness; is that right?</p> <p>16   A. No.</p> <p>17   Q. What were the plainclothes officers</p> <p>18 used for?</p> <p>19   A. They also were to address crime in</p> <p>20 general within The Port Authority Bus Terminal.</p> <p>21   Q. Was one of the things that the</p> <p>22 plainclothes officers did to patrol the restrooms?</p> <p>23   A. Yes.</p> <p>24   Q. And what were they looking for in the</p> <p>25 restrooms?</p>
<p style="text-align: right;">Page 63</p> <p>1                   Fitzpatrick</p> <p>2 look for offenses anywhere from open alcohol</p> <p>3 container within the bus terminal, urinating,</p> <p>4 smoking marijuana, that type of stuff.</p> <p>5   Q. Would public lewdness or exposure in</p> <p>6 the restrooms be one of the conditions that they</p> <p>7 were looking for?</p> <p>8   A. Absolutely.</p> <p>9   Q. Absolutely?</p> <p>10   A. Specifically or -- no, not</p> <p>11 specifically.</p> <p>12   Q. So --</p> <p>13   A. Their instruction was to comb the bus</p> <p>14 terminal in its entirety and any violation of law</p> <p>15 that they were duty bound to take action and make</p> <p>16 arrest they would do so.</p> <p>17   Q. And these were plainclothes officers?</p> <p>18   A. The conditions teams were uniformed</p> <p>19 officers.</p> <p>20   Q. So when I asked you what you put in</p> <p>21 place to combat public lewdness, you mentioned</p> <p>22 plainclothes officers and conditions teams. So</p> <p>23 how did the conditions teams combat public</p> <p>24 lewdness?</p> <p>25   A. Neither one of those teams or --</p>	<p style="text-align: right;">Page 65</p> <p>1                   Fitzpatrick</p> <p>2   A. Any violation of law they could</p> <p>3 observe.</p> <p>4   Q. Was it your idea to institute</p> <p>5 plainclothes patrols or was there already</p> <p>6 happening when you joined The Port Authority?</p> <p>7   A. It wasn't happening. Supposedly it had</p> <p>8 been in the past. I did not see conditions teams.</p> <p>9 I did not see plainclothes teams. I didn't see</p> <p>10 anything but cop-in-a-box type of policing.</p> <p>11   Q. So did the decision to institute</p> <p>12 conditions teams and plainclothes patrolling come</p> <p>13 from you or from someone above you at The Port</p> <p>14 Authority?</p> <p>15   A. It came from me. I would have had to</p> <p>16 have cleared it, I'm sure. The Port Authority,</p> <p>17 again, is a unique animal. Every time you try to</p> <p>18 effect change, you're facing a union and -- but I</p> <p>19 would have had to have cleared several hurdles to</p> <p>20 get them cleared.</p> <p>21   Q. Were those conditions teams and</p> <p>22 plainclothes patrolling something that you brought</p> <p>23 over with you from your time with the MTA?</p> <p>24   A. Yes.</p> <p>25   Q. Were you the person who instituted</p>

<p style="text-align: right;">Page 70</p> <p>1                   Fitzpatrick  2 some sort of incident or emergency-type situation  3 for them to go. They would have to receive a call  4 to go in. They wouldn't as a matter of rule go in  5 and search the restroom.</p> <p>6   Q. So male plainclothes officers wouldn't  7 enter female restrooms; and family plainclothes  8 officers would not enter the men's restrooms?</p> <p>9   A. Correct.</p> <p>10   Q. Was that something --</p> <p>11   A. Well, they shouldn't.</p> <p>12   Q. Was that a specific instruction that  13 they were given?</p> <p>14   A. I don't recall.</p> <p>15    MR. BROPHY: Note my objection.</p> <p>16    You can answer.</p> <p>17   Q. Were plainclothes officers instructed  18 not to interact with the public in the restrooms?</p> <p>19    MR. BROPHY: Note my objection.</p> <p>20    You can answer.</p> <p>21   A. Were they instructed not to interact?</p> <p>22   Q. Either to interact or not to interact?</p> <p>23 Was there any instruction given about how they  24 should deal with the public in the men's  25 restrooms?</p>	<p style="text-align: right;">Page 72</p> <p>1                   Fitzpatrick  2 So if they walk into a bathroom and  3 they see an arrest -- I mean see a crime in  4 progress, I would expect them to make the arrest,  5 but they didn't have to be told that.</p> <p>6   Q. Would you expect them to walk into a  7 restroom and approach the urinals as part of their  8 plainclothes patrol?</p> <p>9    MR. BROPHY: Objection.</p> <p>10    Go ahead.</p> <p>11   A. I wouldn't see why they would or  12 shouldn't.</p> <p>13   Q. I will show you -- do we have copies of  14 Holden starting at PA 1?</p> <p>15    I'd like to show you an exhibit that  16 I'd like to mark as defendants' -- Plaintiffs'  17 Exhibit 1, please.</p> <p>18    (Discussion off the record.)</p> <p>19    (Fitzpatrick Exhibit 1, arrest  20 paperwork for Holden, Bates-stamped PA 1 to  21 49, marked for identification.)</p> <p>22   Q. Do you recognize this document?</p> <p>23    MR. BROPHY: Counsel, for the record,  24 this is Bates-stamped PA 1 to 49  25 consecutively; is that correct?</p>
<p style="text-align: right;">Page 71</p> <p>1                   Fitzpatrick  2    MR. BROPHY: Note my objection.  3    You can answer.</p> <p>4   A. No.</p> <p>5   Q. Were there any techniques for  6 patrolling in plainclothes in the restrooms that  7 were given to those plainclothes officers?</p> <p>8    MR. BROPHY: Note my objection.</p> <p>9    You can answer.</p> <p>10   A. Not that I can recall.</p> <p>11   Q. Were there certain conditions that  12 those officers were instructed to look for in the  13 restrooms?</p> <p>14    MR. BROPHY: Note my objection.</p> <p>15    You can answer.</p> <p>16   A. Crimes? Other than crimes?</p> <p>17   Q. Well, any particular crimes they were  18 instructed to look for in the restrooms?</p> <p>19    MR. BROPHY: Objection.</p> <p>20   A. No. They walk into -- they were  21 instructed to make an arrest for any and all  22 crimes that present themselves. If you have  23 probable cause to making a crime -- I'm sorry, you  24 have probable cause to make an arrest for a crime,  25 you're duty bound to make the arrest on the spot.</p>	<p style="text-align: right;">Page 73</p> <p>1                   Fitzpatrick  2    MR. KRAMER: Yes.</p> <p>3    MR. BROPHY: Thank you. And there are  4 certain portions of it blocked out as well.</p> <p>5    MR. KRAMER: Yes.</p> <p>6    MR. BROPHY: Thank you.</p> <p>7   Q. So, Mr. Fitzpatrick, do you recognize  8 what this is?</p> <p>9   A. Yes.</p> <p>10   Q. What do you recognize it to be?</p> <p>11   A. It appears to be arrest paperwork -- it  12 doesn't appear to be; it is arrest paperwork.</p> <p>13   Q. And is it arrest paperwork for an  14 arrest made, if you look at 03, by Police Officer  15 Michael J. Opronalla?</p> <p>16   A. Yes.</p> <p>17   Q. And the date of the arrest would be May  18 12th, 2014?</p> <p>19   A. Yes.</p> <p>20   Q. And if you look at page 05, does it  21 appear that the person arrested was named Cornell  22 Holden?</p> <p>23   A. It does.</p> <p>24   Q. And do you see on page 5 where it has  25 the section titled the factual basis for these</p>

<p style="text-align: right;">Page 102</p> <p>1                   Fitzpatrick</p> <p>2   Q. During the time that you worked at The 3 Port Authority Police Department, do you remember 4 any other articles coming out that were critical 5 of The Port Authority Police Department's policing 6 techniques?</p> <p>7   A. Sitting here now, no. If there were, I 8 just don't remember. I do -- I remember this 9 after you put it in front of me, but I don't 10 remember any others right now.</p> <p>11   Q. So it's fair to say, isn't it, that 12 this made an impression on you when it came out 13 and this is something that you wanted to deal 14 with?</p> <p>15    MR. BROPHY: You can answer.</p> <p>16    Objection.</p> <p>17    A. I just wanted -- the statement that was 18 made or --</p> <p>19    Q. This article. When this article was 20 published, that this was significant to you?</p> <p>21    A. I will answer it this way: Any time I 22 even think that someone might have been 23 arrested -- and believe me, I know -- for 24 something they didn't do, it's -- yeah, it's a 25 cause of concern for me.</p>	<p style="text-align: right;">Page 104</p> <p>1                   Fitzpatrick</p> <p>2   A. I just don't remember. I'm not saying 3 it didn't happen. I just don't remember the 4 conversation.</p> <p>5   Q. Do you know an officer named Officer 6 Kehoe?</p> <p>7   A. Yes.</p> <p>8   Q. Would it refresh your recollection that 9 you may have spoken to Officer Opronalla and 10 Officer Kehoe after this article was published?</p> <p>11   A. It would not refresh my memory any more 12 than -- although Kehoe is a delegate, so that 13 makes sense.</p> <p>14   Q. And by "delegate" what do you mean?</p> <p>15   A. He's a Police Benevolent Association 16 representative at the command. So he would sit in 17 on a meeting with any type of supervision.</p> <p>18   Q. Do you remember Officer Kehoe raising 19 the issue that he had safety concerns for Officer 20 Opronalla following the publication of this 21 article?</p> <p>22   A. Safety concerns. Regarding?</p> <p>23   Q. Because Officer Opronalla was 24 personally named in this article.</p> <p>25   A. I remember -- I don't remember talking</p>
<p style="text-align: right;">Page 103</p> <p>1                   Fitzpatrick</p> <p>2   Q. Does that refresh your recollection 3 that you may have had a meeting with one of your 4 superiors after you read this article?</p> <p>5   A. I may have, but, again, I don't 6 remember if I did or who it was with.</p> <p>7   Q. Do you remember meeting with Officer 8 Opronalla after this article was published?</p> <p>9   A. I met with Officer Opronalla. I 10 couldn't tell you if it was before or after this 11 or -- I just -- again, you know, I had a lot of 12 people under my command and a lot of meetings. 13 But I have definitely spoken to Michael, because 14 he was in plainclothes a lot.</p> <p>15   Q. Do you remember talking to him about 16 this article?</p> <p>17   A. I really don't specifically. I very 18 well may have. I just don't remember if I did.</p> <p>19   Q. Do you remember having a conversation 20 with Officer Opronalla about the statement in here 21 that he was being referred to as the gay 22 whisperer?</p> <p>23   A. Personally between myself and the 24 police officer?</p> <p>25   Q. Uh-huh.</p>	<p style="text-align: right;">Page 105</p> <p>1                   Fitzpatrick</p> <p>2 to Officer Opronalla. I do remember that it was 3 suggested maybe to take Opronalla out of 4 plainclothes. That could be. I'm not sure if it 5 was because of this or because he was named. It 6 would make sense.</p> <p>7   Q. What other reason could it have been?</p> <p>8   A. I don't know. Like I said, it just 9 makes sense.</p> <p>10   Q. Do you remember now making the decision 11 to take him out of plainclothes?</p> <p>12   A. If he was taken out of plainclothes, it 13 would have been my decision to make. Actually, 14 strike that.</p> <p>15   It would have been the sergeant at roll 16 call's decision to make or the tour commander's 17 decision to make. But if they ran that past me, 18 that's nothing I would have objected to one way or 19 the other.</p> <p>20   Q. You understand this article to be 21 alleging misconduct on behalf of The Port 22 Authority Police Department. Is that fair to say?</p> <p>23   A. Yes.</p> <p>24   Q. What did you do in response to that 25 allegation of misconduct?</p>

27 (Pages 102 - 105)

<p style="text-align: right;">Page 106</p> <p>1                   Fitzpatrick</p> <p>2   A. Now, if you -- if I were to tell you I 3 gathered all of my supervisors into a room and say 4 we have to make sure we have our Is crossed -- Ts 5 crossed, Is dotted, that would be reasonable. If 6 you're asking me do I remember for sure it 7 happened, that would be a lie.</p> <p>8   Q. As a captain of The Port Authority 9 Police Department, you took allegations of 10 misconduct seriously; right?</p> <p>11   A. I did.</p> <p>12   Q. And this was a very public allegation 13 of misconduct by The Port Authority Police 14 Department; right?</p> <p>15   A. Yes.</p> <p>16   Q. So searching your memory, what actions 17 did you take following this serious public 18 allegation of misconduct?</p> <p>19        MR. BROPHY: Note my objection.</p> <p>20        You can answer.</p> <p>21   A. I would -- look, you're asking me again 22 do I remember specifically. What I would normally 23 do is address roll calls about what I had said 24 before, where I would give some sort of -- not so 25 much teaching, but I would address roll calls</p>	<p style="text-align: right;">Page 108</p> <p>1                   Fitzpatrick</p> <p>2   A. Probably -- I say this quite a bit: 3 Remember, whether you're in plainclothes or 4 uniform, you're in the limelight, people watch 5 what you do. Make sure you -- again, I always get 6 that wrong too, Is dotted, Ts crossed, all that. 7 But it's always safety, make sure you're doing 8 your job right, the public's watching.</p> <p>9        I certainly didn't believe that my 10 officers did anything wrong here. As I'm sitting 11 here, I still -- I've been out for a while. Until 12 you show me differently.</p> <p>13        You know, I always tell people, you 14 know, nobody is really happy when they get 15 arrested. That doesn't mean that people aren't 16 arrested unjustly.</p> <p>17        But when I read a report, arrest 18 report -- and you asked me earlier do I read 19 arrest reports. I read them all. And I send them 20 back if I find the grammar is terrible or whatever 21 the case is.</p> <p>22        If I'm dissatisfied about probable 23 cause for an arrest, I would remember it. I just 24 don't remember this.</p> <p>25   Q. Do you remember after this article came</p>
<p style="text-align: right;">Page 107</p> <p>1                   Fitzpatrick</p> <p>2 about current issues.</p> <p>3        If this came out in The Times, that 4 would certainly qualify as a current issue.</p> <p>5   Q. So what would you -- just what is roll 6 call?</p> <p>7   A. Before every tour when the officers get 8 their assignment, they stand muster and they're 9 inspected and given their assignment. That's roll 10 call.</p> <p>11   Q. Who would speak at roll call?</p> <p>12   A. It could be a variety: the sergeant -- 13 the patrol sergeant always spoke. He conducted 14 roll call and inspection. The tour commander may 15 or may not speak. I may or may not speak.</p> <p>16   Q. So you said it's likely -- or correct 17 me if I'm wrong. Is it likely that you would have 18 spoken at roll call about this article following 19 its publication?</p> <p>20   A. I may have, yeah.</p> <p>21   Q. Do you remember speaking about it?</p> <p>22   A. No.</p> <p>23   Q. What would you have said at roll call?</p> <p>24        MR. BROPHY: Objection.</p> <p>25        You can answer.</p>	<p style="text-align: right;">Page 109</p> <p>1                   Fitzpatrick</p> <p>2 out talking to any officers who had made the 3 arrests for public lewdness during this time 4 frame?</p> <p>5   A. I do, actually.</p> <p>6   Q. Who do you remember talking to?</p> <p>7   A. I couldn't tell you who it was, but I 8 do remember the genuine sentiment -- general 9 sentiment around the command. When this came out, 10 the morale went right into the toilet, which is 11 something I was afraid was going to happen when I 12 saw this.</p> <p>13        Nobody really wanted to go out, and 14 they would say, The Port Authority is not going to 15 back us if something goes wrong or even if 16 somebody says something goes wrong, so we have to 17 shut it down, Cap, no hard feelings.</p> <p>18        I think that's what Kehoe was talking 19 about. That's why he didn't want Officer 20 Opronalla taking the chance of getting another 21 complaint.</p> <p>22        The advice I gave is make arrests. If 23 you see probably cause for arrest, no matter what 24 it is, make the arrest. You're in the right. 25 Keep doing your job. If you stop doing your job,</p>

28 (Pages 106 - 109)

